

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2784 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

K P RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR HAROOBHAI MEHTA for Petitioner
MR SP HASURKAR for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

This writ petition has been filed by the
petitioner for revocation of his suspension order dt.
15/3/1983 and also to direct the respondent Government to
reinstate the petitioner in the post of Sub-Accountant.

The petitioner also prayed for a direction on the respondent Government to treat the period under suspension as a period spent on duty and further relief has been claimed that the petitioner be paid his full pay and allowance during the period from the date of his suspension till the date of his reinstatement.

Mr. Ketan Dave, learned counsel for Mr. H.M.Mehta, learned Senior Counsel appears on behalf of the petitioner. Learned counsel submitted that after filing this writ petition, the petitioner made prayer for interim relief and this court by an order dt. 25th June, 1990 granted the interim relief to the petitioner in terms of Para 9(V) of the writ petition. In pursuance of the aforesaid interim relief of this court, the respondent Government reinstated the petitioner to his original post of Sub-Accountants with effect from 3rd August, 1990. It is also admitted by learned counsel for the petitioner that since his joining, the petitioner is regularly getting his pay and allowances from the respondent. At present, the learned counsel limited his prayer to the extent of directing the respondents to treat the period of suspension of the petitioner as on duty and also payment of full pay and allowances from the date of suspension till date of reinstatement. It is an admitted fact that the petitioner was suspended because of his detention in prison for more than 48 hours in connection with the criminal prosecution. In the trial of the said criminal case, the petitioner was convicted and sentenced by the learned Sessions Judge, Bhavnagar. Having felt aggrieved by the decision of the learned Sessions Judge, Bhavnagar, the petitioner filed an appeal before the High Court of Gujarat. The High Court by an order dt. 12th July, 1988 passed in Criminal Appeal No. 417 of 1984 allowed the appeal of the petitioner and acquitted him from the charges. After the acquittal, the petitioner has filed several applications to the respondent Government for his reinstatement, and for payment of his salary and allowances but he was not reinstated to his post. Consequently, the petitioner filed the present writ petition praying for his reinstatement, cancellation of suspension order and for salary.

In pursuance of the interim order passed by this court, the petitioner has been reinstated, and therefore, suspension order passed by the Government has been impliedly revoked, and therefore, no further revocation of order is necessary. Consequently, I am of the view that first prayer made by the petitioner in the writ petition has become infructuous, as the petitioner had

already been reinstated in service with effect from 3/8/1990.

As regards second prayer, the writ petition has also become infructuous in view of the fact that the petitioner has been reinstated and he has already been allowed to join his service and is getting his salary.

As regards third and fourth prayers i.e. regarding treating the period of his suspension as on duty and also payment of pay and allowances during suspension period, I am of the view that this order can only be passed by the competent authority who has reinstated the petitioner in accordance with Rule 152 of the Bombay Civil Service Rules, 1959. Learned Assistant Government Pleader for the respondent -State is not available, and therefore, it is not clear on which ground, the order under Rule 152 of the Bombay Civil Service Rules is not being passed by the respondent, even though he has been reinstated in service from 3/8/1990.

Learned counsel for the petitioner further made a submission that he is not aware whether against the order of acquittal passed by the High Court in Criminal Appeal No. 417 of 1984 on 12th July, 1988, respondent authority has moved the Supreme Court or not by filing an appeal. Learned counsel however could not give any details about whether the case is still pending before the Supreme Court or not. It may be that the competent authority may not be passing any order under Rule 152 because of pendency of the case before the Supreme Court. However since the matter relating to the payment of pay and allowances to the petitioner during the period of his suspension, the question whether the said period will be treated as on duty or not is pending for a long time, I am of the opinion that if appeal before the Supreme Court is not pending, then the competent authority of the respondent should take early decision under the provisions of Rule 152 of the Bombay Civil Service Rules, 1959.

Accordingly, the respondent Government is directed to take a decision as per provisions of Rule 152 of the Bombay Civil Service Rules, 1959 as to how the period of suspension of the petitioner will be treated and also regarding his pay and allowance during the period of his suspension within a period of three months from the date of receipt of this order, if no appeal is pending before the Supreme Court.

With the aforesaid observations and directions,

the writ petition is partly allowed. Rule made absolute to the above extent. I make no order as to costs. The petitioner may apply to the respondent Government for regularising his suspension period along with the copy of this order.

Direct service is permitted.

Date: 27/4/2000. (P.K.SARKAR, J.)
ccshah